



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 28 2005

REPLY TO THE ATTENTION OF
(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jim Beaulieu, Operations Director
Cognis Corporation
4900 Este Avenue
Cincinnati, Ohio 45232

Dear Mr. Beaulieu:

Enclosed is a file stamped Consent Agreement and Final Order (CAFO) which resolves case docket number CAA-05- 2005 0055 with Cognis Corporation. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on 9-28-05.

Pursuant to paragraph 23 of the CAFO, Cognis must pay the civil penalty within 30 days of the date the CAFO is filed. Your check must display the case docket number, CAA-05- 2005 0055, and the billing document number, 050305060.

Please direct any questions regarding this case to Deborah Carlson, Associate Regional Counsel, (312) 353-6121.

Sincerely yours,

William L. MacDowell

William L. MacDowell, Chief
Air Enforcement and Compliance Assurance Section (MN/OH)

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

Cognis Corporation
4900 Este Avenue
Cincinnati, Ohio 45232

Respondent.

) Docket No. CAA-05- 2005 0055
)
)
) Proceeding to Assess a Civil
) Penalty under Section 113(d)
) of the Clean Air Act,
) 42 U.S.C. § 7413(d)
)
)
)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22 (2004).

2. Complainant is the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (U.S. EPA).

3. Respondent is Cognis Corporation (Cognis), a corporation doing business in Ohio.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the

issuance of a Consent Agreement and Final Order (CAFO). 40
C.F.R. § 22.13(b) (2004).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Cognis admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in paragraphs 19 through 22 of this CAFO.

8. Cognis waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. The Stratospheric Ozone Standard, which implements the Stratospheric Ozone Protection provisions found in Subchapter VI of the Act, 42 U.S.C. §§ 7671-7671q, is codified at 40 C.F.R. Part 82.

10. The Stratospheric Ozone Standard in 40 C.F.R. Part 82, Subpart F sets forth service, maintenance, repair, and disposal requirements for "appliances," as that term is defined under the program.

11. 40 C.F.R. § 82.152, defines "industrial process refrigeration" as complex customized appliances used in the chemical, pharmaceutical, petrochemical and manufacturing industries.

12. 40 C.F.R. § 82.166(k), requires that an owner or operator of appliances normally containing 50 or more pounds of refrigerant keep servicing records documenting the date and type of service, as well as the quantity of refrigerant added.

13. 40 C.F.R. § 82.156(i)(3), requires that an owner or operator of industrial process refrigeration equipment perform a follow-up verification test within 30 days to ensure that repairs have been successful.

14. The Stratospheric Ozone Standards, Subpart F, apply to, among others, any person servicing, maintaining, repairing, or owning appliances, as those terms are defined at 40 C.F.R. § 82.152. 40 C.F.R. § 82.150(b).

15. On September 9, 2004, U.S. EPA issued a Finding of Violation (FOV) to Cognis, alleging violations of the Stratospheric Ozone Standards at 40 C.F.R. Part 82, Subpart F.

16. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for Stratospheric Ozone Standards violations that occurred from January 31, 1997 through March 15, 2004, and may assess a civil penalty of up to \$32,500 per day of

violation up to a total of \$270,000 for violations that occurred after March 15, 2004 under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19 (2004).

17. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

18. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations

19. Cognis is the owner or operator of an oleochemical facility located at 4900 Este Avenue, Cincinnati, Ohio.

20. Cognis has two industrial process refrigeration units, 60 Freon Condenser RCNC1 (unit 60) and 68 Freon Condenser RCNC1 (unit 68), and one appliance, 32 Comp (unit 32), which use or did use the class II refrigerant HCFC-22 or R-22, at its Cincinnati Ohio facility.

Violation Allegations

21. Cognis failed to properly conduct follow up verification tests on two occasions (September 2000 and October 2002) for unit 60 and one occasion (September 2001) for unit 68 in violation of 40 C.F.R. § 82.156(i)(3) and Section 608 of the Act, 42 U.S.C. § 7471g.

22. Cognis failed to document the amount of class II refrigerant added to unit '68 (September 2001) in violation of 40 C.F.R. § 82.166(k) and Section 608 of the Act, 42 U.S.C. § 7471g.

Civil Penalty

23. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, Respondent's cooperation and prompt return to compliance, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$ 44,000.

24. Cognis must pay the \$ 44,000 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," within 30 days after the effective date of this CAFO.

25. Cognis must send the check to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

26. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must

write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

Deborah Carlson, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

27. This civil penalty is not deductible for federal tax purposes.

28. If Cognis does not pay timely the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

29. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C.

§ 3717. Cognis will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. Cognis will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

Final Statement

30. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the Violations section of this CAFO and the FOV.

31. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

32. This CAFO does not affect Cognis' responsibility to comply with the Act and other applicable federal, state and local laws, and regulations. Except as provided in paragraph 30 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by Complainant.

33. Cognis certifies that it is complying fully with 40 C.F.R. Part 82, Subpart F.

34. This CAFO constitutes an "enforcement response" as that term is used in "U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine Cognis' "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

35. The terms of this CAFO bind Cognis, and its successors, and assigns.

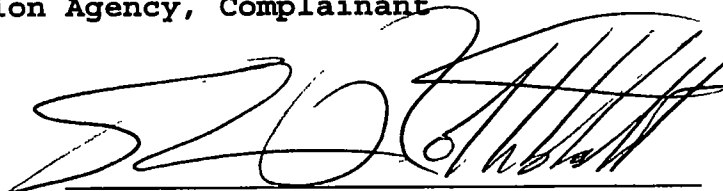
36. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

37. Each party agrees to bear its own costs and attorneys' fees in this action.

38. This CAFO constitutes the entire agreement between the parties.

U.S. Environmental Protection Agency, Complainant

9/27/2005
Date


Stephen Rothblatt, Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5 (A-18J)

CAA-05- 2005 0055 

CONSENT AGREEMENT AND FINAL ORDER

Cognis Corporation

Docket No.

CAA-05- 2005 0055
John

Cognis Corporation, Respondent

September 26, 2005

Date

James D. Beaulieu

James D. Beaulieu
Operations Director - Cincinnati
Cognis Corporation

CONSENT AGREEMENT AND FINAL ORDER

Cognis Corporation

Docket No. CAA-05-2005 0055 *TSW*
Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This final order disposes of this proceeding pursuant to 40 C.F.R. § 22.18.

9/27/05

Date

Thomas V. Skinner

for Thomas V. Skinner
Regional Administrator
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

CERTIFICATE OF SERVICE

I, Loretta Shaffer, certify that I hand delivered the original and one copy of the Consent Agreement and Final Order, docket number CAA-05- 2005 0055 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to Respondent and Respondent's counsel by placing them in the custody of the United States Postal Service addressed as follows:

James D. Beaulieu
Operations Director
Cognis Corporation
4900 Este Avenue
Cincinnati, Ohio 45232

Susan V. Harris
Sidley Austin Brown & Wood LLP
10 South Dearborn Street
Chicago, Illinois 60603

I also certify that I sent copies to:

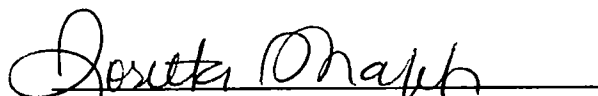
Robert Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency
Lazarus Government Center
PO Box 1049
Columbus, Ohio 43216

U.S. ENVIRONMENTAL
PROTECTION AGENCY
REGION V

05 SEP 28 PM 3:39

REGION 5

on the 28th day of September, 2005.


Loretta Shaffer
AECAS (MN/OH)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0005 9025 6589